

HOUSE BILL 3602

By McManus

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 29 and Title 68, Chapter 120, Part 4,
relative to building codes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-120-401, is amended by deleting such section in its entirety and by substituting instead the following:

Section 68-120-401. There is created a statewide board of building code appeals. This board shall also be the board for all codes related to the design and construction of a building. This board shall be named the board of building code appeals.

Section 68-120-402.

(a) The board of building code appeals shall consist of nine (9) members who have been residents of the state of Tennessee for not less than one (1) year, to be appointed by the governor.

(b) One (1) member of the board of building code appeals shall be qualified and licensed in the field of architecture, one (1) member in the field of civil or construction engineering, one (1) in the field of building construction and materials, one (1) in the field of labor, one (1) in the field of business or finance, one (1) in the field of mechanical engineering, one (1) local codes official, and one (1) fire protection engineer. Not more than two (2) members in any of the categories listed in this subsection (b) may serve on the board at the same time.

(c) Of the seven (7) members first appointed, two (2) shall be appointed for a term of one (1) year, two (2) shall be appointed for a term of two (2) years, two (2) shall be appointed for a term of three (3) years, and one (1) shall be appointed for a term of four (4) years. Thereafter, each member shall be appointed for a term of four (4) years,

and shall serve until a successor is appointed. No member shall serve for more than two (2) consecutive terms.

Section 68-120-403. Within ten (10) days after the appointment of its members, the board of building code appeals shall organize itself by election of one (1) of its members as chairman and another as vice-chairman. The state fire marshal or the fire marshal's duly authorized representative shall serve as secretary to the board and shall be custodian of the minutes and records of the proceedings of the board.

Section 68-120-404. All members of the board of building code appeals shall serve without compensation and may be removed from membership on the board by the governor for continued absence from meetings of the board, physical disability, or other just causes.

Section 68-120-405. A replacement for any member of the board of building code appeals resigning or dismissed from the board shall be appointed by the governor in the same manner as prescribed for regular appointees. Any member appointed as a replacement shall serve only for the remainder of the term of the member replaced, unless subsequently reappointed for an additional term.

Section 68-120-406. The board of building code appeals shall promulgate such rules and regulations pursuant to title 4, chapter 5, as it may deem necessary to conduct its business. The board, in open meetings, shall hear all appeals, from decisions and rulings of the state fire marshal's office. The board shall meet at regular monthly intervals. The day of the monthly meeting shall be determined by the board in its rules and regulations.

Section 68-120-407.

(a) Five (5) members of the board of building code appeals shall constitute a quorum. In varying the application of any provisions, or in modifying any order of state fire marshal's office, affirmative votes of the majority present, but not less than four (4) affirmative votes, shall be required.

(b) No member of the board shall act in any case in which the member has a personal interest.

Section 68-120-408. The board of building code appeals, when so appealed to and after a hearing may vary the application of any code provision to any particular case when, in its opinion, the strict enforcement thereof would do manifest injustice and would be contrary to the spirit and purposes of the codes or public interest, and when in its opinion the interpretation of the fire marshal should be modified.

Section 68-120-409. Whenever the state fire marshal's office rejects or refuses to approve the mode or manner of construction proposed to be followed or materials to be used in the erection or alteration of a building or structure, or when it is claimed that the provisions of the codes do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the true intent and meaning of any of the regulations hereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or the owner's duly authorized agent, may appeal from the decision of the state fire marshal's office to the board of building code appeals. Notice of appeal shall be in writing and filed within thirty (30) days after the decision is rendered by the state fire marshal's office. A fee of fifty dollars (\$50.00) shall accompany such notice of appeal.

Section 68-120-410. In case of a building or structure that, in the opinion of the state fire marshal's office, is unsafe or dangerous, the fire marshal may, in the order, limit the time for such appeal to a shorter period. All appeals under this part shall be filed with the fire marshal on forms provided by the department.

Section 68-120-411.

(a) A decision of the board of building code appeals varying the application of any provision of relevant codes or modifying an order of the fire marshal shall be by resolution of the board, which shall specify in what manner such variations or

modifications shall be made, the conditions upon which they are made, and the reasons therefor.

(b) Every decision of the board shall be final, subject, however, to such remedy as an aggrieved party or the state government may have at law or in equity. All decisions of the board shall be in writing and shall indicate the vote of each member of the board upon the decision. Every decision shall be promptly entered into the minutes of the meeting of the board and filed in the office of the state fire marshal. The records of the board shall be open to public inspection and a certified copy of each decision shall be sent by mail or otherwise to the appellant. A copy of each decision shall be kept publicly posted in the office of the fire marshal two (2) weeks after filing.

(c) The board shall, in every case, render a decision without unreasonable or unnecessary delay.

(d) If a decision of the board reverses or modifies a refusal, order or disallowance of the fire marshal, the fire marshal shall immediately take action concerning such decision or immediately enforce the decision of the board.

SECTION 2. Tennessee Code Annotated, Section 4-29-231(a), is amended by adding a new item thereto, as follows:

() Board of building code appeals, created by § 68-120-401;

SECTION 3. For purposes of making appointments to the board and for promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect September 1, 2008, the public welfare requiring it.